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UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re IDEARC INC., et al., Debtors.	Chapter 11 Case No.:09-31828 (BJH) (Jointly Administered)

RESPONSE OF PARTY-IN-INTEREST SEAN RYAN TO DEBTOR'S MOTION TO ASSUME AGREEMENTS WITH VERIZON COMMUNICATIONS, INC.

Sean Ryan and the McMillan Law Firm, APC, parties-in-interest, respond to the Debtors' Motion to Assume agreements with VERIZON COMMUNICATIONS, INC. Pursuant to 11 U.S.C. § 365 and Federal Rule of Bankruptcy Procedure 6006 ("Motion to Assume") as follows:

The first question remains — what specific agreements with Verizon are at issue in these motions? They have not been uploaded to the website, and they've only been identified in the most general of terms by declarants.

The failure to specifically identify, and provide for review, the contracts in question is a but a facet of the generalized confusion and procedural unfairness that Idearc and its attorneys are intentionally creating in this case, to the unsecured creditors detriment.

At the date of this filing, this case is now 60 days old. Upon filing the Chapter 11 proceeding on March 31, 2009, the Idearc's lawyers immediately sought leave to break with the established notice and hearing procedures set forth in the rules of the Bankruptcy Court for the Northern District of Texas, and to generate their own rules. Two days later, on April 1, 2009, the court had a hearing. On April 8, 2009, a mere seven days after the hearing and well before the undersigned and the majority of the other parties that have since joined this process engaged – the court entered the order governing how a party in interest is to register their position in court. (See, Docket 88.) The Court has allowed substantial motions to be resolved according to these procedures, and apparently with some motions — without the typical 20 day negative notice period required under L.B.R. 9007.1.[1] In light of these "special rules," it is unclear what is happening when, and by what deadlines the parties in interest must respond.

Moreover, Idearc and its lawyers are filing documents that are not keyed to any particular hearing date or motion. This confusion that Debtor's counsel have sown, by failing to even identify which motion identified by a docket entry a declaration relates to, serves Debtor's purpose in rendering futile any participation by a general unsecured creditor.

For instance, Debtor's counsel have filed at least six different declarations on May 20, 2009, for an apparent hearing to be held possibly on June 4, 2009. (See Declarations of Carol Desmond-Donohue, Doc. 321, Rosemary Foreman, Doc. 318, Ronald Lennington, Doc., 322, Norman White, Doc., 319, Mike Wood, Doc. 317, Anthony Plec,

[1] Debtor's counsel have capitalized on these rules of their own creation. For instance, by Debtor's attorney Berry D. Spears, Esq. incorrectly charging that this objector filed papers [Docket No.'s 215, 216] late. (See, Transcript, May 7, 2009, page 10, lines 9-20.) Sean Ryan's papers were filed on May 5, 2009. E.g., 20 days after the April 16, 2009, filing of the notice of hearing. [Docket No. 133]. Yet, Mr. Spears represented to this court, in order to denigrate the Sean Ryan's position, that Ryan's objections were untimely.

Doc. 320.)[2] It is unclear when the hearing on the motions is to be held that the declarations purport to support, as the declarations lack a hearing date.

Although Debtor's counsel struggle to contain their contempt for the individual interests of the small business owners who are now filing their objections by letter, or the individual retiree investors who challenge the anticipated loss of their equity interest in the debtor, and the tort claimants such as Ryan, this Court is still a branch of the District Court, and still owes the participants in this proceeding — notice and opportunity to be heard.[3] That notice needs to be meaningful. It will not be meaningful unless the Court requires that the Debtor identify which declarations accompany which motion, and when that particular motion will be heard.

It is undisputed that Idearc is a leader in a dying industry, which could be even likened to a modern day "buggy-whip" manufacturer. But, this case involves more than just the interests of people who chose to invest in debt and loan money to this Debtor. Indeed, the billions of dollars of "secured" debt created through the leveraged buy out of the Yellow Page Directory publishing division of that parent Verizon Communications, run by canny management who managed by way of the spinoff to pay out Verizon shareholders a healthy dividend while depriving their creditors payment. While the trade and tort creditors debt may dwarf the debt held by other classes of creditors such as bond

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[2] Concurrent with the filing of this opposition to the relief sought on the undersigned objects to each of the forementioned declarations. Most grievously, and fundamentally troubling, is that the declarations purport to summarize written material that might just as easily be placed in the record for those of us with at least an average literacy to review.

[3] The Fifth Amendment of the U.S. Constitution provides that "no person shall be … deprived of life, liberty, or property without due process of law." Procedural due process mandates that a litigant receive notice and have an opportunity to be heard." *Scott v. Fort Ord Gen. Credit Union (In re G. Weeks Sec. Inc.)*, 5 B.R. 220, 226 (Bankr. W.D. Tenn. 1980); *In re Longoria,* 400 B.R. 543, 552 (Bankr. W.D. Tex. 2009)

holders, there is a fundamental distinction between those classes. In any event, the interests of the trade creditors who did not agree to speculate in commercial debt paper, and the interests of those persons who were injured by the malfeasance and criminal conduct of Verizon Communications, should be entitled to something other than a courthouse version of the Bum's Rush. The origin of the debts held by the trade creditors and tort claimants is entirely distinct than that of the supposedly "secured" but formerly "insider" debt of the bondholders.

The equitable nature of this proceeding also requires that the Debtor's counsel cooperate with fundamental bankruptcy procedures, such as encouraging his client's representative to answer questions at a 341 Hearing.[4] It is obvious that Idearc and its

[4] Whether or not a bankruptcy case has been filed in good faith is always at issue. (See, F.R.B.P. 9011.) To the extent that Debtor's management and Debtor's lawyers have failed to identify all the creditors in the case and the amount that they are owed bears on whether Idearc initiated bankruptcy in good faith. The facts to suggest whether or not a case is subject to dismissal or conversion is an appropriate area for inquiry at a 341 hearing. See *In re Woods* (1987, BC ED Pa) 69 BR 999. (Creditor can determine whether evidence to meet necessary standard exists by examining debtor at meeting of creditors; creditor should be able to ascertain prior to filing complaint whether reasonable basis exists for facts alleged in dischargeability complaint and whether facts are sufficient to meet burden of substantial justification under 11 USCS § 523(d); purpose of § 341 examination is to make determination as to whether there are grounds for objections to discharge or dischargeability of debts and scope of examination is quite broad.) *In re Martin*, 12 B.R. 319, 320 (Bankr. S.D. Ala. 1981), citing H.R. Rep. No. 595, 95th Cong., 1st Sess. (1977), page 332; S. Rep. No. 95-989, 95th Cong., 2d Sess. (1978), p. 43.) ("The purpose of the examination is to enable creditors and the trustee to determine if assets have improperly been disposed of or concealed or if there are grounds for objection to discharge.")

Mr. Gerber, Debtor's counsel, instructed the Debtor's representative to not answer questions as to the steps that Debtor's representative took in verifying the accuracy of the schedules. (See, Transcript of 341 Hearing on May 9, 2009.) The amount of Sean Ryan's judgment was unlisted, precluding the trustee considering Ryan for membership on the Official Creditors Committee. "Bad faith" conduct is grounds for dismissal or

lawyers are gaming the bankruptcy court process in a manner that is harming those individuals and businesses that are least capable of defending themselves and their property interests in this process. The gamesmanship needs to stop. But, Idearc and its lawyers will only abate the misconduct if the court requires it.

SEAN RYAN IS A PARTY IN INTEREST

Sean Ryan is a former employee of Verizon Communications, Inc., a Delaware Corporation, Verizon Informations Service, and Verizon Directories Sales-West, Inc., all Delaware Corporations (collectively "Verizon"). Said companies employed Sean Ryan between August 20, 2005, and March 21, 2006. Sean Ryan initiated a lawsuit against Verizon Directories Sales-West, Inc. on August 2, 2006 in the Superior Court of California, for the County of San Diego, captioned *SEAN RYAN, an individual, Plaintiff, vs. VERIZON DIRECTORIES SALES - WEST, INC., a Delaware corporation*, Case No. GIN 054512, which proceeded to jury and court trial. As a result of that trial and post trial proceedings, Sean Ryan and his counsel The McMillan Law Firm, APC, are owed a combined sum of $172,590.14. Judgment was entered in that action on March 10, 2008.

During the course of the action, counsel for Verizon and Idearc failed to disclose the nature of the spinoff of Idearc, citing that "only the name of the corporate entity has changed." (Declaration of Theresa Murray dated August 23, 2007) Further, Debtor has suggested by assertion of the automatic stay in the Court of Appeals in the State of California, for the Fourth District, Division One, Case No.'s D053060 and No. D054166. that the collection of that obligation is barred by the instant bankruptcy proceedings.

However, in a probable effort to avoid appointing Sean Ryan or his attorneys as

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conversion of the bankruptcy case under 11 U.S.C. 1112, and to the extent that the Debtor's financial statements are fabricated it should not have the benefit of this procedure. The 341 examination, but for Mr. Gerber's conduct, would have allowed such an inquiry.

members of the Official Creditors Committee, neither Sean Ryan or The McMillan Law Firm, APC have been listed on the schedules of the Debtor as creditors.

California Civil Code section 1457 provides in relevant part that "the burden of an obligation may be transferred with the consent of the party entitled to its benefit, but not otherwise. . . ". To the extent that the Verizon Communications Inc., suggests that it may shift its burden to pay damages to Sean Ryan to the dead-on-arrival Idearc, Inc., this effort is not consented to.

ARGUMENT

Accordingly, pursuant to 11 U.S.C. § 365(e)(2)(ii), and such other non-bankruptcy law, to the extent that any claim against Verizon is extinguished, neither Sean Ryan or the McMillan Law Firm, APC consent to any assumption by Debtors of the debt owed by Verizon and specifically OBJECT.

Further, the Court should overrule the motion in light of the Debtor to adequately support the motion with competent evidence.

Respectfully submitted,

Dated: May 31, 2009

SPIEGEL, LIAO & KAGAY, LLP

THE MCMILLAN LAW FIRM, A.P.C.

/S/ SCOTT A. MCMILLAN

BY: _____
Scott A. McMillan
Charles M. Kagay
Attorneys for Party In Interest
Sean Ryan

CERTIFICATE OF SERVICE

I certify that on May 31, 2009, a true and correct copy of the foregoing pleading was served (1) electronically by the Court's ECF system, or (2) according to the orders specific to this case – by sending an email copy to the persons who have supplied email address, or otherwise (3) by first class mail upon those persons identified by the ECF system as having requested notice appeared but not receiving electronic notices.

/S/ SCOTT A. MCMILLAN

BY: _____

Scott A. McMillan